Filed 11/30/12 Marriage of Christensen and Gottesman CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re the Marriage of PEGGY CHRISTENSEN and MARC GOTTESMAN.	B220953
PEGGY CHRISTENSEN, Plaintiff and Respondent, v. MARC GOTTESMAN, Defendant and Appellant.	(Los Angeles County Super. Ct. No. BD416598)

APPEAL from orders of the Superior Court of Los Angeles County. Elizabeth Feffer, Judge. Affirmed.

Alan M. Goldberg, for Defendant and Appellant; Marc Gottesman, in pro. per.

Peggy Christensen, in pro. per, Plaintiff and Respondent.

Marc Gottesman appeals from the trial court's denial of his motions to vacate the judgment dissolving his marriage to Peggy Christensen. We affirm.

FACTS AND PROCEEDINGS

Appellant Marc Gottesman and respondent Peggy Christensen married in 1987. In 2004, respondent filed for divorce. Thereafter, they stipulated to the appointment of a retired superior court commissioner to try all matters involving their marital dissolution, including distribution of property, child custody, and support.

On July 15, 2008, the commissioner entered a judgment of dissolution. The parties had anticipated the trial taking seven days, but it lasted 32 days instead. The commissioner faulted appellant for needlessly prolonging the trial with his litigation tactics. The commissioner ordered appellant to pay respondent $280,000 in attorney's fees and costs and $25,000 in sanctions under Family Code section 271.[1] Following entry of judgment, the commissioner's jurisdiction ended on August 16, 2008, and the case was assigned to Los Angeles Superior Court Judge Elizabeth R. Feffer.

One year after entry of judgment, appellant moved to vacate the judgment. (§ 2122 [provides one year time limit to set aside family law judgment].) In October 2009, Judge Feffer denied the motion to vacate. Appellant filed a notice of appeal. On the judgment's second anniversary, appellant filed a new motion to vacate the judgment. Judge Feffer denied that motion, too, and appellant filed a second notice of appeal. By order dated June 30, 2010, we permitted appellant to proceed with his first appeal, and by order dated November 17, 2010, we consolidated the second appeal with the first.

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1 All further undesignated section references are to the Family Code.

DISCUSSION

1. *Judge Feffer's Authority to Rule on Appellant's Motions to Vacate*

Pursuant to the parties' stipulation, the presiding judge of the superior court appointed a retired superior court commissioner to try their marital dissolution case. Several times during the proceedings, the superior court extended the commissioner's jurisdiction. On July 15, 2008, the commissioner entered his judgment. Two months later on September 16, 2008, the commissioner's jurisdiction terminated and as of that date the case was assigned by the presiding judge to Judge Elizabeth R. Feffer.

Following the case's assignment to Judge Feffer, appellant filed in July 2009 and 2010 his motions to vacate the judgment of dissolution. Los Angeles Superior Court rules in effect at the time required that a motion to vacate a judgment be "presented" to the judge who entered the judgment or to the court's presiding or assistant presiding judge. Then-Local Rule 3.3 stated, "Every application for . . . the vacation of an order or judgment after the hearing of the matter . . . shall be presented to the judge who made the order and if he/she is not available, to the Presiding Judge or the Assistant Presiding Judge . . . ." (Super. Ct. L.A. County, Local Rules, rule 3.3.) When appellant filed his motions to vacate, the commissioner who had entered the judgment no longer had jurisdiction in the case. Therefore, according to appellant, only the court's presiding (or assistant presiding) judge should have ruled on his motions to vacate – not Judge Feffer.

Appellant is mistaken. Rule 3.3 does not state the presiding judge must "rule" on the motion to vacate; it states the motion "shall be presented" to the presiding judge. As the body which promulgated the Los Angeles Superior Court local rules, the superior court best shows by its practices the correct interpretation and application of its rules. We do not discern from the word "presented" any intent by the superior court to deprive Judge Feffer of the authority to rule in a case assigned to her. The presiding judge had assigned the case to Judge Feffer, and Judge Feffer in keeping with that assignment ruled on the motions to vacate. We see no error.

2. *We Reject the Remainder of Appellant's Contentions*

We review denial of a motion to vacate a judgment for abuse of discretion. (*In re Marriage of Simmons* (1975) 49 Cal.App.3d 833, 837.) The record in this appeal is voluminous. Given the record's size, it is especially important for appellant to bear in mind that "[i]t is not the task of the reviewing court to search the record for evidence that supports the party's statement; it is for the party to cite the court to those references. Upon the party's failure to do so, the appellate court need not consider or may disregard the matter. [Citations.] The same is true with respect to appellant's legal arguments that are not supported by citation to legal authority." (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 827 fn. 1; *Salas v. California Dept. of Transportation* (2011) 198 Cal.App.4th 1058, 1074 [appellate court "not required to search the record to ascertain whether it contains support" for appellant's contentions].)

The record contains ten volumes of a clerk's transcript filed in June 2010, totaling 2,373 pages. In August 2010, appellant supplemented the record with two appellant's appendices consisting of 442 more pages. In February 2011, three more volumes consisting of 847 additional pages purporting to be a clerk's transcript were filed, but these additional volumes lack a clerk's certification authenticating that the clerk had prepared them. All told, the 15 volumes of clerk's transcripts and appellant's appendices contain more than 3,600 pages. Additionally, the record contains 12 volumes of reporter's transcripts totaling more than 1,200 pages. "It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations." (*Duarte v. Chino Community Hosp.* (1999) 72 Cal.App.4th 849, 856.) "An assertion of fact on appeal carries no weight where the cited source is the same unsupported assertion made in the trial court . . . . An unsupported assertion below does not become a 'fact' on appeal simply by repetition." (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1378-1379.)

With the foregoing principles of appellate practice in mind, we reject the following assertions and contentions by appellant, either because appellant does not

support them with citations to evidence in the record, or cogent legal argument supported by citation to legal authority, or both:

● Appellant's contention that his trial counsel's withdrawal 11 days into the trial hindered his ability to present his case. Apparently the withdrawal was precipitated by an altercation between appellant and counsel over attorney's fees; we say "apparently" because appellant's discussion of the point at page four of his opening brief does not support his claims. At page four he writes:

> "At trial, [appellant] was initially represented by the law firm of Nachsin & Weston. But after already hearing 11 days of trial, the commissioner then granted Nachsin's motion to withdraw, due to an alleged assault on [appellant] by his attorney for allegedly not paying legal bills. **(CT 2468; RT 369:21, 308:21; CT 3350:10; RT 348: 7, 11; 360:13, 19; 1184:1.)**" (Bold added.)

None of his record citations in the preceding quotation show an assault was the reason the court permitted appellant's counsel to withdraw, and only one of the citations refers even indirectly to an assault, calling it an "altercation." Moreover, none show counsel's withdrawal prejudiced appellant. We address one-by-one each record citation from the above quotation:

» **Clerk's transcript 2468** is the order granting counsel's motion to be relieved and says nothing about an assault.

» **Reporter's transcript at page 369 line 21** begins mid-sentence and states: "days for petitioner, in which we are in our eleventh day."

» **Reporter's transcript at page 308 line 21** begins mid-sentence and states: "case overall because we're in the middle of trial."

» **Clerk's transcript at page 3350 line 10** is a subheading entitled "24. Jurisdiction and Disqualification Proceeding" on page 30 of respondent's brief in the trial court seeking attorney's fees and costs. Under the subheading, respondent's counsel wrote: "During the course of Trial and after the first eleven

days of Trial, after the altercation between [Appellant] and his attorney and their eventual exit from the case, [Appellant] started on a calculated course to circumvent and invalidate the authority of the Private Judge." A pleading is not evidence. (*Grant-Burton v. Covenant Care, Inc., supra,* 99 Cal.App.4th at pp. 1378-1379.)

» **Reporter's transcript at page 348 lines 7 through 11** states: "Mr. Langlois, and it -- if you take that out of it, isn't that just a case about fees. Court: Well, that is the question. And the question – Mr. Neavitt: This is just a case about fees." The citation does not establish appellant's contention.

» **Reporter's transcript at page 360 lines 13 through 19** states: "Mr. Langlois can't continue this trial. There certainly is no reason if it's merely substance for a fee dispute to allow the firm to withdraw. Or more important, Mr. Langlois not to continue with this trial. Because that's not for this forum, that's for another forum as between Mr. Gottesman and his counsel. [¶] But when it's reduced to those two areas, neither one forms a basis for withdrawal." The citation does not establish appellant's contention.

» And, finally, the reporter's transcript does not have a page 1184 as cited by appellant. Volume 5 of the reporter's transcript ends at page 1138 and Volume 6 begins at page 1201.

● Appellant's contention that the commissioner erred in imposing section 271 sanctions against appellant for concealing marital assets in a Washington Mutual bank account. The commissioner found appellant did not disclose the account, but appellant claims he did. In support, appellant cites his motion to vacate the judgment and his notice of motion for new trial. Pleadings, however, are not evidence. (*Grant-Burton v. Covenant Care, Inc., supra,* 99 Cal.App.4th at pp. 1378-1379.)

● Appellant's complaint that he "was led to believe that his motions, pending during trial, would be heard after trial. He repeatedly requested hearings on these motions. The commissioner refused, and, later, the trial court held that the motions had been subsumed into the judgment. This was error." Appellant does not identify those

motions nor direct our attention to where in the record we can find them. He does not discuss their nature, the relief he sought, or the reasons he believes they were well-taken. Accordingly, we consider them no further. (*Regents of University of California v. Sheily, supra,* 122 Cal.App.4th at p. 827 fn. 1.)

● Appellant's complaint that respondent asserted her Fifth Amendment right to silence in response to his question at trial whether she had delayed reporting to taxing authorities the proceeds she received from selling her condominium. (Apparently respondent filed an amended tax return several years after the sale in which she did disclose the sale.) He also complains that the commissioner did not consider those proceeds in calculating appellant's support payments to respondent. Appellant does not support his assertions with a cogent legal argument that the commissioner erred in permitting respondent to invoke her right to silence, or with citations to evidence showing the commissioner ignored the sale proceeds. Thus, we consider them no further. (*Regents of University of California v. Sheily, supra,* 122 Cal.App.4th at p. 827 fn. 1.)

● Appellant's assertion that respondent ignored the commissioner's *Gavron* warning that she become economically self-sufficient. (*In re Marriage of Gavron* (1988) 203 Cal.App.3d 705, 712.) Appellant does not direct us to where in the record the commissioner issued the statement. In addition, he does not cite evidence in the record that shows respondent did not seek work. Instead, he cites a 2007 declaration in support of his motion for new trial and excerpts from the trial transcript in which he stated: "Because with a warning of February 2005 and the employability and income that the Petitioner could have been having for the past two and a half years . . . ." Those citations may embrace appellant's contentions, but they do not establish the validity of appellant's assertion.

● Appellant's assertion that the commissioner entered the judgment of dissolution during an ex parte meeting with respondent. At page ten of his opening brief, appellant writes:

"Following the trial, the commissioner further demonstrated bias and was complicit in extrinsic fraud by meeting ex parte with Peggy and her counsel to execute the judgment on July 15, 2008. **(CT 1690:6.)** Marc was not present and was not informed. **(CT 1689:25.)** The judgment was entered secretly without any notice to Marc. **(CRC 14.16, CT 1683:4, 1687:24, 1689:18, MVD 9:1.)**" (Bold added.)

His citations do not support him. We take each citation one-by-one:

» **Clerk's transcript at page 1690 line 6** is the following statement in appellant's July 2008 Motion to Vacate: "Exh. A-2, Notice of Entry of Judgment, mailed." He does not tell us where in the clerk's transcript we can find that notice; instead he leaves it to us to comb through the record, where we find almost 70 pages later an unremarkable Notice of Entry of Judgment filed on July 15, 2008. ~(CT 1758)~

» **Clerk's transcript at page 1689 line 25** is the following sentence from appellant's July 2008 motion to vacate the judgment: "Petitioner Christensen and her attorney had ex parte communication with the judge pro tem in her office, prior to admission to the office of Respondent Gottesman." Pleadings are not evidence. (*Grant-Burton v. Covenant Care, Inc.*, *supra*, 99 Cal.App.4th at pp. 1378-1379.) Moreover, repetition of unsupported assertions made in the trial court do not become true simply by virtue of repetition on appeal. (*Ibid*.)

» Appellant's citation to **"CRC 14.16"** presumably refers to California Rules of Court, but rule 14.16 does not exist.

» **Clerk's transcript at page 1683 line 4** is from appellant's July 2008 motion to vacate and states: "Petitioner Christensen failed to comply with disclosure requirements, and caused a judgment to be entered without satisfying the statutory disclosure requirements." Pleadings are not evidence, and unsupported assertions in the trial court do not become true by repetition on appeal.

» **Clerk's transcript at page 1687 at line 24** is a section heading entitled "WITHOUT NOTIFICATION TO RESPONDENT GOTTESMAN, PETITIONER SUBMITTED A JUDGMENT TO JUDGE PRO TEM ON JULY 15, 2008 FOR SIGNATURE AND FILED IT THE SAME DAY" in appellant's July 2008 motion to vacate. Pleadings are not evidence, and unsupported assertions in the trial court do not become true by repetition on appeal.

» **Clerk's transcript at page 1689 line 18** from appellant's July 2008 motion to vacate states: "A judgment is void if the respondent didn't receive adequate notice of the relief sought. In re Marriage of Van Sickle (1977) 68 CA3d 728, 137 CR 568 et seq." The citation does not support the assertion in appellant's brief.

» The citation to **MVD 9:1** is indecipherable because appellant's opening brief does not define the abbreviation "MVD." Using the search feature of Microsoft Word on an electronic copy of appellant's opening brief, we find the first reference to "MVD" occurs on page 3 of the brief, but neither on that page nor anywhere else does appellant tell us what it means.

We shall not belabor our point. Suffice it to say that in addition to appellant's contentions that we have already addressed above, the following assertions in appellant's brief likewise lack support from citations to the record or legal authority or both, and are thus unavailing.

● Appellant's assertion that the commissioner permitted respondent to sell the family home without proper notice.

● Appellant's assertion that the commissioner received "secret" payments from the sale proceeds of the family home.

● Appellant's assertion that respondent's attorney improperly withdrew $515,000 from a joint trust account.

● Appellant's assertion that respondent's attorney returned to her as a "kickback" a $50,000 fee award imposed against appellant, resulting in appellant's double-paying fees to respondent.

● Appellant's assertion that the commissioner ignored respondent's assets in awarding her attorney's fees under the fee shifting statute of section 2030, subdivision (a)(1).

DISPOSITION

The orders denying appellant Marc Gottesman's motions to vacate the July 15, 2008 judgment are affirmed. Respondent Peggy Christensen to receive her appellate costs.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.